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FISCAL IMPACT REPORT

SPONSOR Tsosie DATE TYPED 2/25/05 HB _____

SHORT TITLE Detoxification Reform Act Changes SB 950

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None		\$0.1	Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Health Policy Commission (HPC)
 Administrative Office of the Courts (AOC)
 Department of Health (DOH)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

SB 950 proposes significant changes of definitions, processes, and liability under the Detoxification Reform Act. The bill also provides for the emergency civil commitment of individuals impaired by alcohol and drugs and allows for detention for up to 72 hours.

SB 950 is attempting to meet the community and law enforcement's need for the medical versus legal intervention for alcohol or drug impaired persons who are at a risk of harming themselves, others or property. New Mexico is part of a growing national trend to treat alcohol and drug impairment as a health issue, rather than a criminal justice issue. The bill describes a process for the voluntary and involuntary commitment "consistent with the least drastic means principle" to a treatment facility for persons impaired by alcohol or drugs. The bill describes the duties and responsibilities of the DOH involved with commitment procedures of both adults and minors.

Significant Issues

SB 950:

- Defines alcohol and drug impairment as the substantially endangered health and well-being of a person.
- Defines “treatment facility”, allowing for detention centers providing detox services. Allows for a treatment facility to refuse a client if facility is full or person too ill, disruptive or dangerous. Decisions related to discharge and safety is left to the treatment facility.
- Defines an “authorized person” as a physician or police officer.
- Clarifies principle “consistent with the least drastic means”, allowing for habilitation, treatment and protective custody to ensure treatment, security of facility and protection of self and others from physical injury.
- Defines intoxicated person as impaired mental or physical functioning with intentions of serious, unjustified bodily harm on self or others.
- Corrects language replacing “transportation to jail” with “protective custody”.
- Treatment to include “protective custody” as one of the services extended to alcoholics, drug-impaired, or intoxicated persons.
- “Protective custody” defined as voluntary or involuntary, with commitment interval shortened from 5 days to “not less than 12 hours or more than 72 hours”.
- Protective custody occurs if the person is disorderly in public, unable to care for their own safety, or has threatened or inflicted damage to another’s property, in addition to harm to self or others.
- Protective custody will occur at the nearest licensed and suitable facility, not necessarily one closest to client’s residence.
- Language added that ensures a detained person’s constitutional rights are protected.
- Grants authority to treatment facility to admit voluntary clients.
- Clarifies state policy by adding “drug impairment” in addition to alcohol intoxication as in need of protection.
- A record of protective custody will not be considered an arrest or be entered in a criminal record.
- Adds a new section protecting treatment facilities and their employees from civil liability other than “gross negligence or intentional misconduct”.

PERFORMANCE IMPLICATIONS

DOH would be responsible for the developing policies and procedures regarding the care and rehabilitation of persons impaired by alcohol and drugs, and facilitate meetings of community partners to disseminate information and provide guidance.

FISCAL IMPLICATIONS

Treatment programs can cost significantly less than incarceration, especially with new “offenders”. Intoxicated or impaired persons detained under this Act will incur the costs associated with treatment. This may or may not be difficult to enforce if the intoxicated or impaired person lacks either a payor source or a private funding source. Less than 45% of all New Mexico counties allow indigent funds to be used for substance abuse treatment.

This bill could lead to an increase in the number of people the state’s treatment facilities are

asked to treat, and treatment beds are in short supply around the state.

Regarding commitment hearings, the bill indicates that costs for an examination shall be borne by the county in which the person resides if the person is indigent.

ADMINISTRATIVE IMPLICATIONS

The DOH and the judiciary will have additional administrative, regulatory and personnel training needs in the recognition and handling of alcohol or drug impaired persons.

TECHNICAL ISSUES

The term “guardian” should be clarified as to what type of authority, as guardian can mean a child’s parent or “guardian”, or a power of attorney or “legal guardian”.

The opportunity to “contact” counsel (as opposed to “consult”) may not ensure that a client’s rights are protected.

OTHER SUBSTANTIVE ISSUES

CYFD is concerned there is no specific protection or provision for children or adolescents who may be victims of physical harm or threat against their person.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Inconsistencies would still exist as to the length of time in a treatment facility. The constitutional rights of involuntarily committed incapacitated persons may not be fully protected.

POSSIBLE QUESTIONS

Is there a procedure in place to help law enforcement officials manage an intoxicated person with a coexisting medical illness, psychiatric disorder, or acutely intoxicated?

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